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AUTHOR	Stefkovich, Jacqueline A.
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ABSTRACT

This paper presents court cases for the purpose of updating current knowledge on search and seizure of students in the school setting. These cases focus on the balance and interplay between students' Fourth Amendment rights and school administrators' obligations to maintain order and discipline in the schools. Part of this obligation implies keeping schools safe for students. Cases are presented by category: general (21 cases), strip searches (14 cases), mass or random drug testing (13 cases), metal-detector searches (6 cases), random locker searches (3 cases), field-trip searches (4 cases), and other searches conducted without individualized suspicion (6 cases). (RT)

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Jacqueline A. Stefkovich

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Search and Seizure of Students in Public Schools:
2002 Update of Fourth Amendment Cases[1]

by
Jacqueline A. Stefkovich[2]
Professor & Department Head
The Pennsylvania State University
9/15/02

The Fourth Amendment to the U.S. Constitution guarantees "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by government officials. New Jersey v. T.L.O., 469 U.S. 325 (1985), a landmark United States Supreme Court decision handed down on January 15, 1985, addressed the authority of public school officials to conduct searches of students on school grounds and established that students have Fourth Amendment rights.

According to this Court, students' Fourth Amendment rights must be balanced against school administrators' obligations to maintain order and discipline in the schools. Part of this obligation implies keeping schools safe for students. While the T.L.O. decision did not specifically address itself to mass (metal detector, drug testing) and highly intrusive (strip) searches, legal scholars and subsequent courts generally considered such searches to be illegal. In the past few years, several lower courts (Williams, 1991; Widener, 1992; Cornfield, 1992; Dukes, 1992) have upheld such searches in the name of safety.

In the Williams case, a 6th circuit court upheld the strip search of a female student for drugs. Since the first case was decided in 1973, no other court had been willing to uphold such an intrusive search. There had been "strip" searches upheld, but these were minimally intrusive, generally involving only the removal of outer garments such as jackets or shoes. After Williams, two other lower courts (Widener, 1992 and Cornfield, 1992) followed suit, upholding very intrusive searches of students. Both of these cases involved male high school students and both searches were for drugs. In Widener, the student was asked to remove his jeans. In Cornfield, the student was required to remove all of his clothing including his underwear. In both cases, the strip search was conducted in the presence of school officials of the same gender as the student being searched and no drugs were found.

Thus far, such intrusive searching seems to be limited to searches for drugs with a few exceptions. In Mark Anthony B. (1993) a strip search for $100 was not upheld but in Singleton (1995), a strip search and pat-down of a male student's crotch area for $150 was legal and the school was immune from §1983 damages. In McClung (1995), a U.S. district court in Indiana held a strip search of a class for $4.50 illegal. While the school was not held liable for damages because such searching was not custom, the court held that the principal, teacher, and food service worker were not entitled to immunity because a strip search for such a small amount of money was clearly a constitutional violation. In Kennedy (1998), New Mexico's Supreme Court ruled that the strip search of ten students for a missing ring was unconstitutional in that the group was too large for each of its members to be individually suspect. A federal district court in South Dakota (Konop, 1998), refused to grant summary judgment for the strip

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searching of two 8th grade girls for stolen money.

In Pennsylvania, a federal district court (Sostarecz, 1999) ruled that a strip search by the school nurse was not reasonable after she had determined that the student's vital signs showed no instance of drug use. This court refused summary judgment regarding the §1983 claims against the nurse but did grant summary judgment for the principal because there had been no previous such instances as to put him on notice. But in Talladega (1997), an eleventh circuit court refused to award §1983 damages for a strip search of two elementary students for $7.00 because it was not necessarily so that school officials would have known such a search was illegal because there was no precedent in the state or circuit.

A federal district court in Virginia used similar logic in refusing to award damages to a veterinary student who was strip searched after being accused of cheating on an exam (Carboni, 1996). On the other hand, in response to concerns about strip searching, seven states have passed laws prohibiting administrators from conducting strip searches in public schools: California, Iowa, New Jersey, North Carolina, Oklahoma, Washington, and Wisconsin.

As for metal detector searches, in Dukes, a New York court was the first to legalize the use of metal detectors in public schools. These searches were for weapons. Since Dukes, other lower courts hearing cases involving cities such as Los Angeles, Chicago, and Philadelphia (People v. Latasha W., 1998; Pruitt, 1996; In the Interest of S.S., 1996; In the Interest of F.B., 1999) and other large districts such as Dade County, Florida (State v. J.A., 1996) have followed suit.

Similarly, there is precedent for conducting other types of reasonable searches without individualized suspicion if safety issues are involved. For example, in the California case, In re Alexander B. (1990), a small group of students was searched because "someone" in the group was said to possess a gun. The element of danger was considered adequate to justify the search.
This safety-based rationale for conducting non-individualized searches also holds true for drug testing. Until 1995, the lead (Supreme Court) cases addressed the rights of adult employees in work situations (Skinner, 1989; Von Raab, 1989). In school situations, the results were mixed. In general, searches involving mass searching of students for drugs had not been upheld (Odenheim, 1985; Brooks, 1989), however, exceptions were made such as in the case of student athletes (Schaill, 1988).

In 1995, the United States Supreme Court handed down its second opinion on students' Fourth Amendment rights. In this decision, Vernonia School District 47J v. Acton, the Court maintained that drug testing of student athletes without individualized suspicion was legal under certain circumstances. Here, the Court applied a three-tier test making the legality of the search contingent upon: the need for the drug testing, the expectation of privacy of the persons to be tested; and obtrusiveness of the search. The High Court did not rule explicitly on whether or how this decision might be applied to other student groups or to other types of mass searches such as metal detector searches or random locker searches. Justice Ginsburg, in a separate opinion, suggested that the Court had reserved its opinion in this issue.

Until this year's (2002) U.S. Supreme Court decision in Earls, lower courts were divided as to whether Vernonia could be extended to the drug testing of groups other than student athletes. In Todd v. Rush (1998), a seventh circuit court ruled that mandated drug testing for students participating in extracurricular activities was legal while Colorado's Supreme Court, in Trinidad School District No. 1 v. Lopez (1998), decided otherwise. The Trinidad court held that Vernonia did not apply to the drug testing of band members because, unlike athletic teams, participation in the band was not wholly voluntary and there was a qualitative difference in the communal undress exhibited by band members as opposed to athletes. In Miller v. Wilkes (1999), an eighth circuit court used the Vernonia standard in ruling that drug testing students in all extra-curricular activities was constitutional. In Earls (2002) the United States Supreme Court ruled that drug testing of students involved in extracurricular activities is legal.

Three other federal courts – in the fourth (DesRoches, 1998), eighth (Thompson v. Carthage, 1996), and ninth (McGlothlin, 1997) circuits – have interpreted the Vernonia standard as allowing school administrators authority to search students without individualized suspicion in situations other than drug testing. Below is a list of cases addressing these and other relevant issues.

GENERAL

Gruenke v. Seip, 225 F.3d 290 (3d Cir. 2000). A member of a swim team who was asked by her coach to take a pregnancy test, claimed violations of state law and damages under §1983. The 3rd Circuit Court of appeals overturned a lower court decision by ruling that the coach's request did violate the student's 4th amendment rights and that he was not entitled to qualified immunity relative to disclosure of student's personal and medical records.

Hedges v. Musco, 204 F.3d 109 (3d Cir. 2000). A math teacher at Northern Highlands Regional High School in New Jersey observed that a female student in his class seemed uncharacteristically talkative and outgoing and that her face was flushed and her eyes were red and glassy. He did not smell anything on her, but he suspected that she was under the influence of alcohol or another drug. He reported his views to a school administrator who sent the student to the school nurse. The student was administered a drug test. Parents brought suit claiming, among other things, violation of due process and 4th Amendment rights as well as assault and battery. The 3rd circuit court held that neither 4th nor 14th Amendment rights had been violated, that the school drug testing policy was not unconstitutionally vague, and that the manner of administering tests was not unconstitutionally vague.

B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260 (9th Cir. 1999). A former student brought suit against the Quincy High School in Plumas County, California. School officials asked students to wait outside their classroom while a trained canine sniffed backpacks, jackets, and other belongings which the students left in the room. The dog also signaled students directly upon entering and leaving the classroom. The court held that the sniffing was a search and that the search was unreasonable because there were no reported drug instances in the school. In regard to money damages, school officials were granted qualified immunity in that their actions did not violate clearly established rights that a reasonable person would have been aware of in that, at the time of the case, it was not clearly established that dog sniffing in schools constitute a search under the Fourth Amendment.

Bridgman v. New Trier H.S. District 203, 128 F.3d 1146 (7th Cir. 1997). A male high school student exhibited what appeared to be signs of drug use (alleged unruly behavior, dilated pupils, bloodshot eyes, giggling). As a result, he was subjected to a "medical assessment" by the school's Health Service Coordinator and was searched by the school's Student Assistance Program Coordinator who had initially noticed his behavior. A federal circuit court maintained that the search and the ordering of a medical assessment were legal and that the school's policy requiring written reports about student searches was constitutional.

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Brousseau *ex rel.* Brousseau v. Town of Westerly *ex rel. Perri*, 11 F. Supp. 2d 177 (D.R.I. 1998). Sarah Brousseau's mother brought this suit on behalf of her daughter, a sixth grader. Here, the issue was whether Sarah's 4th and 14th Amendment rights were violated by school officials when they conducted a warrantless search of Sarah in an effort to find a missing knife. Assistant Principal John Carson conducted pat down searches of the students. The search consisted of patting down area in front and back of pockets and ankles. The court held that the search was reasonable where it was limited to a pat down by officials of the same gender and the governmental concern of finding a knife in a school is a compelling issue. They granted summary judgment for the school district.

James *ex rel.* James v. Unified School Dist. No. 512, 959 F. Supp. 1407 (D. Kan. 1997). A school

resource officer assigned to Shawnee Mission Northwest High School received a parental tip that James had a handgun in his vehicle and had brought it into the school previously. The officer shared this information with the school's associate principal. The following day, the officer, the associate principal, and a campus police officer got James from class and all four went to James's car for the search, which yielded a gun. The U.S. District Court of Kansas granted summary judgment on James' §1983 claims for the school resource officer, associate principal, superintendent of the school district, and the Shawnee Chief of Police based on a theory of qualified immunity, as the law was not clearly established at the time.

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In re D.E.M., 727 A.2d 570 (Pa. Super. Ct. 1999). School officials were informed by police that they had received an anonymous tip that a student possessed a gun on school property. D.E.M. was called to the office where he emptied his bag. Nothing was found. School officials gained D.E.M.'s permission to be searched. A knife was found in his pocket. He also admitted to having a gun in the pocket of a jacket in another student's locker. The other student unlocked his locker and the gun was found. D.E.M. was arrested. Here, the court held that school officials did not act as agents of the police because the purpose of the search and seizure was primarily to ensure the safety of the students for whom the school officials are responsible, and police did not coerce school officials. The school official's conduct was reasonable under the circumstances. The trial court's finding that suppression was warranted was reversed and the case was remanded for trial.

In re Dengg, No. 97-P-0113, 1999 WL 259838 (Ohio Ct. App. May 3, 1999).
Streetsboro City Schools granted permission to the police to do a sweep of the school with canines to detect contraband. After this sweep, police searched the parking lot. One of the canines signaled a car owned by the appellee's father. A pipe with marijuana residue was found. A magistrate maintained that the warrantless search was not reasonable and the evidence should be suppressed. An Ohio state appeals court reversed this ruling, holding that the sniff was not a search under the 4th Amendment and that the canine's alert to the police created probable cause for the search. The court also ruled that T.L.O. standard does not apply to police but that the automobile exception to the warrant requirement applies to parked as well as moving vehicles.

State v. Tinkham, 719 A2d 580 (N.H. 1998). Two students at Kingswood Regional High School reported to the principal that they saw a plastic bag containing marijuana in a book bag belonging to a fellow student. Upon questioning this student, Principal Brooks found marijuana. The court held that the search was reasonable, as was the scope of the search, in that Brooks was justified in the initial search to prevent future drug sales, and the search was not excessively intrusive. In addition, Brooks did not act as an agent of the police and was thus not required to administer Miranda rights.

State v. Whorley, 720 So.2d 282 (Fla. Dist. Ct. App. 1998). Pasco High School Assistant Principal Forbes was approached by two students who claimed Whorley, a student at the school, had "ecstasy." Forbes located Whorley in the hallway and took him to the office. Whorley produced a bag of ecstasy after being informed by Forbes that he would be searched. The court held the search reasonable in that the inception of the search was justified because of the tip and the scope was reasonable.

State v. Marola, 582 N.W.2d 505 (Wis. Ct. App.), *review denied,* 585 N.W.2d 159 (Wis. 1998). Marola was a student at New Berlin West High School. He had been previously cited for smoking on school grounds. A teacher entered a bathroom where Marola was present and smelled smoke. The teacher asked him to empty his pockets because of the odor, and Marola's history of smoking. Marola produced a large black wallet. The teacher asked him to open it. When Marola did, a bag of marijuana fell out. Marola was charged with possessing drugs within 1000 feet of school. The court held that the search was reasonable under the two prong *T.L.O.* standard where the first question to empty his pockets was justified and opening the wallet was sufficiently related to the initial suspicion that Marola was smoking.

In re David J.M., 587 N.W.2d 458 (Wis. Ct. App. 1998). A police officer, on a routine bike patrol of the

high school, saw David put his hand in his pocket suspiciously. Upon confrontation, David stated that he had put a cigarette in his pocket. David then pulled out a bag of marijuana which he had tried to conceal in his hand, after the officer asked him to empty his pockets. The court held that the stop was reasonable, the search was proportional to that stop and incident to the arrest for possession of tobacco by a minor. Because David had reason to believe he was in custody during the confrontation with the officer, this gave the officer the right to search further. Thus, the evidence should not be suppressed.

Packer v. Board of Educ. Of Thomaston, No. CV 970075242, 1998 WL 40487 (Conn. Super. Ct.) *aff'd in part, rev'd in part*, 717 A.2d 117 (Conn. 1998). Packer, a senior at Thomaston High School, was pulled over by a police officer, the officer saw marijuana in the ashtray. A subsequent search revealed more marijuana in the trunk. Packer's arrest was reported to the School District. The School Board voted to expel him. The appeals court affirmed the injunction in that Packer did not have adequate notice that possession of two ounces of marijuana off school grounds would subject him to expulsion and the school expulsion statute is too vague to be Constitutionally enforceable.

Commonwealth v. J.B., 719 A2d 1058 (Pa Super. Ct 1998). Singleton, a school police officer, noticed appellant staggering with his eyes closed. Appellant's speech was slurred. Singleton took the student to an office and ordered him to remove everything from his pockets. Finding nothing, he shook appellant's pants and found a bag of marijuana. The court held that it was reasonable, in view of appellant's behavior, for Singleton to suspect that a search would turn up evidence of a violation of the law. Suppression is not warranted where suspicion is reasonable and the search is related to a well founded suspicion.

State v. Angelia D.B.,564 N.W. 2d 682 (Wis. 1997). An assistant principal observed one student with a knife and received information of another student who had a gun. The male school liaison officer was called and spoke with the informant who identified Angelia. The officer approached Angelia and conducted a pat-down. Her backpack was also searched. While Angelia waited in the school office, there was a search of her locker. No weapons were found. When asked, Angelia stated that she did not have a weapon. A search of her person was conducted by the male officer. He lifted up the bottom of her shirt to reveal her waistband. The officer noticed a knife and seized the item. The court weighed the gravity of a concealed knife within a school and the interest in maintaining a safe environment as substantial against the student's expectation of privacy. Therefore, the search was reasonable.

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In re Haseen N., 674 N.Y.S.2d 700 (N.Y. App. Div. 1998). To curb the egg-throwing that is common around Halloween, the principal of Intermediate School 390 approved a pat-down search of students as they arrived. A guidance counselor patted down Haseen N., 13, and felt something hard in the boy's midsection. The counselor told the Safety Sergeant at the school to investigate further. Upon unzipping Haseen N.'s jacket, the Safety Sergeant found a gun. The N.Y. Supreme Court found that the search was justified and reasonable in that the method used was the least intrusive possible and properly balanced the student's interest in privacy with the school's interest in order.

Shoemaker v. Texas, 971 S.W.2d 178 (Tx. Ct. App. 1998). The court held that the search of a student's school locker was reasonable under federal and state constitutions since the student was the only one present when the credit cards were stolen, which gave rise to reasonable suspicion.

In re. P.J.K., No. C1-98-351, 1998 WL 713479 (Minn. Ct. App. 1998). A high school liaison police officer and an assistant principal noticed P.J.K. inappropriately dressed and asked him to step into the assistant principal's office. Because the officer and assistant principal smelled marijuana, they asked P.J.K. to empty his pockets which contained a cigarette lighter and a wad of cash. Next, the assistant principal conducted a pat-down search because she felt that P.J.K. was intentionally avoiding completely exposing the inside of his pockets and felt that P.J.K. may have a weapon. The pat-down search yielded marijuana. The Court of Appeals of Minnesota affirmed the legality of the search because the officer and the

assistant principal had reasonable suspicion to conduct the search based on the totality of the circumstances.

K.K. v. State, 717 So. 2d 629 (Fla. Dist. Ct. App. 1998). A student informed a school official that other students were smoking marijuana in the boys' restroom. The school official entered the restroom followed by a school resource officer. Heavy smoke and smoldering butts on the floor were apparent. The school official searched the 6-8 boys who were in the restroom and found marijuana in K.K.'s wallet. Affirming the lower court, the Florida District Court of Appeals held that the search was legal because the school official acted on reasonable suspicion that the boys possessed marijuana.

D.I.R. v. State, 683 N.E.2d 251 (Ind. App. 1997). An Indiana high school routinely had an officer at the front door who used a hand held metal detector to check for weapons. A student arrived late, after the officer had locked away the detector. The officer began a manual search of the student's pockets. During the search he discovered marijuana cigarettes, a pipe, and rolling papers. The court recognized that even though students were aware of the metal detector search conducted each morning, it did not provide an implied consent to a more intrusive physical search. Thus, the manual search did not meet the reasonableness standard and was in violation of the Fourth Amendment.

J.A.R. v. State, 689 So.2d 1242 (Fla. Dist. Ct. App. 1997). An 8th grade student at Seth McKell Middle School informed a teacher that J.A.R. had a gun. The teacher sent this student to the assistant principal who asked the student if he was sure which student replied in the affirmative. The assistant principal then called the school resource officer to assist in this matter. The two took J.A.R. out of class and asked him if he had a gun. When J.A.R. admitted he had a gun, the officer conducted a pat-down search and recovered the weapon. The Florida District Court of Appeals affirmed the legality of the search. Citing People v. Pruitt, the court found that the student tip provided reasonable suspicion to take J.A.R. from class for questioning; also, J.A.R.'s admission of having a gun made the scope of the pat-down search permissible.

Juan C. v. Cortines, 647 N.Y.S.2d 491 (N.Y. App. Div. 1996), *rev'd*, 679 N.E.2d 1061 (N.Y. 1997). A school security aide at William Howard Taft High School observed Juan C. walking toward him in a hallway with a bulge that resembled the handle of a gun weighing down the left side of his jacket. The aide grabbed Juan C., but the student ran away. A hallway chase ensued. The aide grabbed Juan C. at the bulge in his jacket. Another aide removed the gun from Juan C.'s jacket. Bronx County Family Court determined that the search was unreasonable because the outline of the gun was not visible and the bulge did not take any specific shape or form or look suspicious; this determination was not appealed. An appeal to the New York Court of Appeals was sought regarding whether school authorities could reexamine the issue of the search in school proceedings; the court found that collateral estoppel did not bar this reexamination as the school authorities were not a party to the Family Court proceedings.

STRIP SEARCHES

Thomas *ex rel.* Thomas v. Roberts, 261 F.3d. 1160 (11th Cir. 2001). Sergio Evans, a 5th grader at the West Clayton Elementary School in Georgia, brought an envelope to school containing $26 that he had raised selling candy for a school trip. He laid the envelope on a table near the teacher's desk. The envelope was later missing. Strip searches of the class were conducted by the teacher and the DARE officer who was there to teach a class. The 11th Circuit Court held that strip searches conducted without individualized suspicion were unreasonable. The district was not liable under §1983 because staff had not received adequate training or supervision theory. However, the county could be held liable under § 1983 for the actions of its officer.

Jenkins v. Talladega City Bd. of Educ., 115 F.3d 821 (11th Cir. 1997). Two second grade girls were strip searched after being accused of taking a missing $7. The court did not rule on the reasonableness of the

search but did state that §1983 damages would not be awarded because school officials would not necessarily have known that the search was unreasonable because there was no precedent in either Alabama or in the 11th Circuit.

Cornfield v. Consolidated High School District 230, 991 F.2d 1316 (7th Cir. 1993). A male high school student was suspected of "crotching" drugs. He was ordered to remove all his clothes and school authorities visually inspected his naked body. No drugs were found, but the search was upheld as reasonable.

Williams by Williams v. Ellington, 936 F.2d 881 (6th Cir. 1991). In a search for drugs, a female high school student was requested to remove her t-shirt and lower her jeans to her waist. The search was upheld.

Doe v. Renfrow, 631 F.2d 91 (7th Cir. 1980), reh'g denied, 635 F.2d 582 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1980). Following a canine search, eleven junior and senior high school students were strip searched for drugs. The canine search was reasonable; the strip searches that followed were not.

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Sostarecz ex rel.Sostarecz v. Misko, No. Civ. A. 97-CV-2112, 1999 WL 239401 (E.D. Pa. March 26, 1999). Sostarecz, a female student at Emmaus Junior High School in Pennsylvania was sent to the nurse's office by her health teacher for suspected drug use based on bizarre actions in class. The nurse's exam of the girl's vital signs and pupils showed no evidence of drug use. Sostarecz claims that Nurse Weider took her into the bathroom, ordered her to remove her pants, and inspected her legs and private area. The court held that summary judgment regarding the §1983 claim was not warranted. Qualified immunity is not applicable because the search was something the district employees should have been aware was unconstitutional and a right had been clearly established. Determining that drug use had not occurred based upon the pupil and vital signs exam, it was not reasonable to search the student for drugs because there was no reason to believe she possessed any. Summary judgment for Principal Misko was granted where it cannot be shown that any incident such as the instant one had occurred previously to put him on notice. Summary judgment for assault and battery is denied where it cannot be said as a matter of law that nurse's actions did not rise to that level. Summary judgment for intentional infliction of emotional distress is granted where the alleged acts clearly do not rise to that level.

Konop *ex rel.* Konop v. Northwestern School Dist., 26 F. Supp. 2d 1189 (D.S.D. 1998). Two eighth grade girls were strip searched by a female music teacher upon a request by the male principal. The two girls had allegedly been seen acting suspiciously upon commencement of the search, possibly exchanging money. These girls, Genzler and Konop, had 14 and 10 dollars respectively. The principal determined this was not the stolen money. The girls were told to remove their underwear, pants, and bras. Both girls were crying but felt they couldn't say "no." The court held that qualified immunity was not relevant since reasonable suspicion to strip search was missing, and there was a question of fact as to the principal's conduct in that a reasonable school official should have known that a strip search without reasonable suspicion is a violation of the students' rights. Summary judgment for the school district was not warranted.

Kelly v. Orleans Parish School Bd., No. Civ. A 97-1696, 1998 WL 419673 (E.D. La. 1998). At McDonough No.35 High School, forty-two dollars was missing from a band trip fund. A teacher performed a cursory search of the students but did not locate the money. The teacher called a security officer who inspected the students' bookbags, desks, and personal property. A vice-principal was called to assist the security officer in searching the males. Another vice-principal was called to strip search the females. The U.S. District Court for the Eastern District of Louisiana granted summary judgment for the school board, the teacher, and another individual. In its analysis regarding qualified immunity, the court determined that none of the parties violated Kelly's clearly established constitutional right(s). The court found that the teacher's cursory search was reasonable as no individual suspicion was necessary. Further, there was no

evidence that the school board or the other individual acquiesced to strip searches or even had knowledge of any strip searches at the school.

Carboni v. Meldrum, 949 F. Supp. 427 (W.D. Va. 1996). A veterinary student was accused of cheating after she had left a make-up test to go to the women's lavatory and the secretary monitoring the test saw someone in the restroom stall with class notes. The student was subjected to a strip search by school officials and filed suit. The court granted summary judgment on the federal claims maintaining that the college was not on notice of violation of a clearly established constitutional right. The court refused to rule on additional state law claims.

Oliver by Hines v. McClung, 919 F.Supp. 1206 (N.D. Ind. 1995). All students in a physical education class were partially strip searched after two students reported a missing $4.50. Students were asked to remove shirts and undergarments. Pants were patted down and, in some instances, waistbands of the pants were checked. The court ruled that the school board and superintendent were not liable because there was no custom or practice of such searches in the school but that the principal, food service worker, and teacher who conducted the searches were liable under §1983 because such searches were a clear constitutional violation.

Singleton v. Bd. of Educ. U.S.D.500, 894 F. Supp. 386 (D. Kan. 1995). The school's assistant principal partially strip searched a 13 year old middle school student and patted down his crotch area after a woman accused him of stealing $150 from the front seat of her car. The court ruled the search was legal because it was justified at its inception and reasonable in light of the student's age, sex, and the nature of the wrongdoing. §1983 claims did not hold since the search was legal.

Widener v. Frye, 809 F. Supp. 35 (S.D. Ohio 1992). A former high school student brought a §1983 suit against school officials claiming that his Fourth Amendment rights had been denied when school officials subjected him to a strip search for marijuana. School officials asked the student to remove his jeans after they observed that the student was acting "sluggish" and after they detected what they believed to be the smell of marijuana on his person. The court ruled that the search was reasonable as a matter of law.

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Kennedy v. Dexter Consolidated Schools, 10 P. 3d 115 (NM 2002). The New Mexico Supreme Court upheld the judgment against Dexter Consolidated Schools for conducting an unreasonable strip search. In this case, ten students were strip searched to their undergarments for a missing ring. A lower court held that although it was reasonable for school officials to believe that one of the ten students in the classroom had taken the ring, that group was too large for each of its members to be considered individually suspect. The New Mexico Supreme Court held that 1) for purposes of qualified immunity, these searches clearly violated established law; 2) the search was not justified at its inception and was excessive in scope; 3) lesser degree of counselor and superintendent's involvement did not entitle them to qualified immunity; 4) erroneous jury instruction delineating detention as a separate basis for liability was harmless error; 5) evidence supported employees' reckless indifference for purposes of punitive damages; 6) award of fees under §1988 required evidence of hours expended.

State v. Mark Anthony B., 433 S.E.2d 41 (W.Va. 1993). A student was strip searched for money. The search was not upheld because money did not pose the same sort of danger as drugs or weapons.

MASS OR RANDOM DRUG TESTING

Bd. of Education of Independent School District No. 92 of Pottawatomie County v. Earls, __ U.S. __, 122 S.Ct. 2559 (2002). The U.S. Supreme Court ruled that random drug testing of students involved in extracurricular activities is legal.

Vernonia School District 47J v. Acton, 515 U.S. 646 (1995). A seventh grade student was not permitted to participate in interscholastic athletics because he refused to submit to the school's drug testing program. The Court ruled that the program was constitutional. There were drug problems in the school and student athletes have a reduced expectation of privacy.

National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989). Drug testing of customs agents without individualized suspicion was reasonable because of the government's interest in preventing bribery and misuse of firearms. Because they were
subject to fitness and character examinations, agents had a diminished expectation of privacy.

Skinner v. Railway Labor Executives' Association, 489 U.S. 602 (1989). After balancing the government's need to search against the privacy rights of railroad employees, the court determined that drug testing without individualized suspicion was reasonable in cases involving accidents or issues of safety. Also, because of physical fitness requirements, employees had diminished expectations of privacy.

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Joy v. Penn-Harris-Madison School Corporation, 212F.3d 1052 (7th Cir. 2000). Students at PHM High School claimed that the schools' random drug testing policy violated their 4th Amendment rights. A federal district court granted summary judgment for the school system. The 7th Circuit Court of Appeals upheld the lower court's decision ruling that: 1) random, suspicionless drug testing of students in extracurricular activities is legal; b) the school system demonstrated sufficient need to justify random drug and alcohol testing of these students but did not justify sufficient need to test for nicotine.

Miller *ex rel.* Miller v. Wilkes, 172 F3. 574 (8th Cir. 1999).
Cave City (Arkansas) Schools has a drug policy requiring that, to participate in extra-curricular school activities, students must give written consent to be drug tested by random selection. Miller refused to participate in the drug program by way of his guardian Troy Miller, but wanted to participate in extra-curricular activities. He sought injunctive relief. The 8th circuit court of appeals held the random drug testing program, reasonable under the 4th Amendment because: a) Cave City public school students involved in extra-curricular activities have a lessened expectation of privacy; b) the school district has an important and immediate interest in discouraging drug and alcohol use; and c) the minimal amount of intrusion is proportional and the district's interest

Willis v. Anderson Community School Corp., 158 F.3d 415 (7th Cir. 1998). The 7th circuit court of appeals held that it was unconstitutional for an Indiana school district to have a policy which required the drug testing of all students who are suspended regardless of the offense. The court distinguished this case from Todd v. Rush where students participating in extracurricular activities were tested. In Todd, unlike Willis, participation was voluntary. The Anderson School District's policy required drug and alcohol testing of students who possess or use tobacco, are truant, or are suspended for three days or more.

Todd v. Rush County Schools, 133 F.3d 984 (7th Cir. 1998). Parents brought suit against the Rush County Schools claiming the district's program which required random urine testing for drugs, alcohol, and cigarettes of all high school students wanting to participate in extracurricular activities violated students' Fourth Amendment rights. Citing Vernonia, the court held the drug testing as reasonable.

Schaill v. Tippecanoe County School Corp., 864 F.2d 1309 (7th Cir. 1988).
Random urine testing of student athletes was considered to be a reasonable search because of the school's interest in preventing drug-related injuries, because student athletes are role models for other school students, and because the intrusion into privacy is lessened in light of other physical examinations required of student athletes.

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Brooks v. East Chambers Consolidated School District, 730 F. Supp. 759 (S.D. Tex. 1989). The court granted a permanent injunction in the case of a student athlete who was expected to submit to urine testing based on a school policy requiring this test for all students who participate in extracurricular activities. The policy had been passed in light of a general societal problem, but this particular school district had not had such problems. Because there was no compelling need for the search and the search was unlikely to accomplish its objectives, the court deemed the search to be unreasonable.

Anable v. Ford, 663 F. Supp. 149 (W.D. Ark. 1985). The court ruled that urine testing of high school students for marijuana was unreasonable. There were doubts as to the reliability of the tests and visual monitoring of the students urinating was considered to be excessively intrusive.

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Trinidad School District No. 1 v. Lopez, 963 P.2d 1095 (Colo. 1998). Carlos Lopez, a senior band member, brought suit against Trinidad School District claiming that the school's drug testing policy which required all students in grades 6-12 participating in extracurricular activities to submit to random drug testing was unconstitutional. Citing Vernonia, Colorado's Supreme Court held that the policy was not legal because, unlike athletic teams, participation in the band was not wholly voluntary and there was a qualitative difference in the communal undress exhibited by band members as opposed to athletes. This decision represents a departure from the seventh circuit's decision in Todd v. Rush which upheld a similar policy and from the recent U.S. Supreme Court decision in Earls.

Odenheim v. Carlstadt-East Rutherford Regional School Dist., 510 A.2d 709
(NJ Super 1985). A New Jersey superior court ruled that mandated urine testing (for drugs and alcohol) of all high school students as part of their annual physical examination constituted a search under the Fourth Amendment and was unreasonable because it was a violation of students' privacy rights. Such massive searches were also considered to be unjustified in light of the numbers and percentages of students in the school with drug and alcohol problems.

METAL DETECTOR SEARCHES

In re F.B., 658 A. 2d 1378 (Pa. Super. Ct. 1995), *aff'd* 726 A.2d 361 (Pa. 1999).
F.B. was subjected to a point of entry search upon entering University High School in Philadelphia, Pa. Parents and students are informed at the beginning of the year that such searches will occur and postings are made throughout the year. All students were required to stand in line while their packs and coats are searched. The students were searched by a hand held metal detector. The officers were acting under direction of school officials. F.B. emptied his pockets during the search. He was found carrying a Swiss Army knife with a three inch blade and was arrested. The court held that there was no 4th Amendment violation because the search affected a limited privacy interest, was minimally intrusive, notice of the search was provided to the student population, and the purpose of the search was compelling. No finding of individualized suspicion was necessary because the search was conducted on all students. Evidence should not be suppressed.

People v. Latasha W., 70 Cal. Rptr. 2d 886 (Cal. Ct. App. 1998). The Los Angeles Unified School District has a written policy allowing daily random searches with hand-held metal detectors. School officials may conduct these searches provided they use some sort of neutral criteria in determining who to search. In this case, the assistant principal searched students who were at least 30 minutes late for school and entered the attendance office without a pass. The metal detector beeped on Latasha who was asked to open her pocket. A knife was found. The court cited other states' decisions on metal detector searching as well as the Vernonia opinion in ruling that the search was legal and that individualized suspicion was not required.

In the Interest of S.S., 680 A. 2d 1172 (Pa. Super. 1996). During a student-wide metal detector search at

a Philadelphia high school, a student was asked place his coat on a table. The school officer scanned the coat and then patted it down. A box cutter was found in the coat pocket. The court noted that individualized suspicion was not needed since this was an administrative search conducted for the purpose of ensuring safety. Also, due to the high rate of violence in the Philadelphia schools, the search was justified and deemed reasonable. Therefore, the search did not violate the Fourth Amendment.

People v. Pruitt, 662 N.E.2d 540 (Ill. 1996). There were three separate incidents that occurred at three different Chicago public schools. 1) When S. Pruitt walked through a metal detector, the police assigned to the school were alerted that he may possess a metal object. The officers conducted a pat-down and felt a bulge in his pocket. A gun was found on his person. The court determined that the school's metal detector searches were suspicionless, administrative searches conducted as part of a general regulatory scheme to ensure safely. The interest in protecting students from violence outweighed the student's privacy interests which were minimal. Thus, individualized suspicion was not required and the search did not violate Pruitt's Fourth Amendment rights. 2) An officer assigned to the school was informed by security of a student statement which mentioned J. Cheatam had a weapon. The officer had Cheatam brought to the school office and asked if there were anything in his possession that could get him into trouble. Cheatam pointed to his coat pocket and when asked what it was, he told the officer it was a gun. The officer then removed the gun from Cheatam's pocket. The court believed that the informant tip from another student created a reasonable suspicion that justified the intrusion. 3) A teacher notified the school dean of a stranger in the school who was acting suspicious and walking on a staircase that was prohibited for students. The dean confronted the student, Brooks, and took him to an office. After questioning, it was determined that Brooks was in fact a student at the school and not a stranger. After approximately sixty minutes in the office, the dean ordered Brooks to empty his pockets. In finding the search violative of the Fourth Amendment, the court stated that the dean's knowledge that Brooks was a student and the passage of sixty minutes changed the set of circumstances that would have lead to reasonable suspicion. The request for Brooks to empty his pockets was an unparticularized suspicion and was unreasonable.

State v. J.A., 679 So. 2d 316 (Fla. App. 1996). An independent security firm was hired by the school board to conduct searches of district schools with a hand held metal detector. A team arrived at a Florida secondary school class and noticed a jacket being passed to the back of the room. The team retrieved the jacket, scanned it, and found a gun. J.A. was identified as the jacket's owner. The court identified this search as a random, suspicionless, administrative search to further the purpose of keeping schools safe. The nature of search was considered a minimal intrusion and the interest of protecting schools from weapons and violence was immediate. Hence, the search was reasonable and not in violation of the Fourth Amendment.

People v. Dukes, 580 N.Y.S.2d 850 (N.Y. City Crim. Ct. 1992). A New York court ruled that a student's rights were not violated when she was subjected to a metal detector search without individualized suspicion. The metal detector search resulted in a search of the student's book bag whereupon a knife was found.

RANDOM LOCKER SEARCHES

In re Patrick Y., 746 A.2d 405 (Md. 2000). A school security guard at Mark Twain School received a tip that drugs and/or weapons were in the middle school area. The principal authorized a middle school wide locker search. A knife and rolling papers were found in the locker of Patrick Y., an eighth grade student. Citing the school officials' need to keep the school safe, the Court of Special Appeals of Maryland affirmed the lower court's determination that the search was legal. The court found that the search of lockers was justified because of the report that drugs and/or weapons may be in the school. Maryland's Sate Supreme

Court uheld these decisions, determining that a student has a lower expectation of privacy regarding his/her locker and that a locker search is not seriously intrusive as it is not an intrusion on the person.

Commonwealth v. Cass, 709 A.2d 350 (Pa. 1998). After observing numerous occurrences of what appeared to be suspicious student behavior (frequent phone calls, use of beepers, and carrying large sums of money), administrators at Harborcreek High School in Erie County, requested the state police to conduct canine sniffing of student lockers. Drugs were found in only one of the 2,000 lockers searched. Drug paraphernalia and a small amount of marijuana was seized. The student was called to the principal's office and read his rights. Overturning a state superior court decision, Pa.'s Supreme Court maintained that this search was reasonable under the federal constitution and Article 1, §8 of the Pa. Constitution. The court pointed out the danger of drugs and students' limited privacy in schools as a basis for its decision.

In re Isiah B., 500 N.W.2d 637 (Wis. 1993). As the result of a random search of student lockers, a gun and cocaine were found in Isiah B's coat pocket. Wisconsin's Supreme Court held this search as reasonable because lockers are school property as defined in the student handbook, student locks are not permitted on the lockers, and there was a risk of imminent, serious harm to students and staff.

FIELD TRIP SEARCHES

Webb v. McCullough, 828 F.2d 1151 (6th Cir. 1987). On a trip to Hawaii of 140 students, a principal's search of student rooms for alcohol and without individualized suspicion was unreasonable.

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Rhodes v. Guarricino, 54 F. Supp. 2d 186 (S.D.N.Y. 1999). Students were on a class trip at Disney World. They had been notified that they would be subjected to room checks and were required to sign a pledge that they would not use drugs or alcohol. Guarricino, a chaperon, smelled marijuana. He was informed that the hotel allowed chaperons in the rooms of student groups. He searched some twenty rooms while the students were not there. The search uncovered marijuana and alcohol in Rhodes' room. Rhodes sued for §1983 damages. Applying the *Vernonia* standard to school sponsored trips, the court held that there was more individualized suspicion than in *Vernonia*. Also, even if it were established that Guarricino violated Rhodes' 4th Amendment rights, he would be entitled to qualified immunity.

Desilets v. Clearview Regional Bd. of Educ., 627 A.2d 667 (N.J.Super 1993). A New Jersey school had a policy of inspecting handheld luggage prior to field trips. These searches were held reasonable in that advance notice was given.

Kuehn v. Renton School Dist. No. 403, 694 P.2d 1078 (Wash. 1985). Mass searches of students' luggage prior to a field trip were unreasonable because they lacked individualized suspicion.

OTHER SEARCHES CONDUCTED WITHOUT INDIVIDUALIZED SUSPICION

DesRoches *ex rel.* DesRoches v. Caprio, 974 F. Supp. 542 (E.D. Va. 1997), 156 F.3d 571 (4th Cir. 1998). A female classmate noticed that the tennis shoes she had left on her desk were missing. James Lee, Dean of Students conducted a search of the entire class. DesRoches, a 9th grader, objected to the search. He was suspended for refusing to submit his bag to be searched. The court held that the search was reasonable because after the search of the other students turned up nothing, the proposed search of DesRoches' pack was based on individualized suspicion.

Smith v. McGlothin, 119 F.3d 786 (9th Cir. 1997). A school security guard at Orange Glen High School in Escondido, California, received complaints from neighbors that students were smoking near the school. When the guard and Vice Principal McGlothlin arrived at the area, they saw smoke and some 20 students

but could not tell which students in the group were actually smoking. They brought the students back to the school and searched them. Beth Ann Smith was found with three knives. School authorities turned her over to the police and a juvenile court judge suppressed the evidence and dismissed the charges. Smith brought action under §1983 claiming that the search was conducted in an unreasonable manner because students were not asked who was smoking, there was a two-hour delay in searching the students, and there was no individualized suspicion. A federal district court dismissed the case on grounds of qualified immunity. The ninth circuit court ruled that Smith's reasons supporting an unreasonable search were not valid and, hence, McGlothlin was not liable under §1983. The ninth circuit court cited Vernonia and Alexander B., a California case, as precedent for conducting reasonable searches without individualized suspicion.

Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996). A bus driver saw fresh cuts on a school bus seat and reported them to the principal of Carthage High School in Arkansas. Upon hearing this news, the principal decided to search all boys in grades 6-12. After the search began, students told the principal that there was a gun at school that morning. Students were told to remove their jackets, shoes, and socks, empty their pockets, and place these items on a large table. Students were then searched with a metal detector and patted down if the detectors sounded. Thompson was searched and cocaine was found in the match box he had in his jacket pocket. Even though there had been no individualized suspicion, the search was upheld. The court cited Vernonia to justify the lack of individualized suspicion.

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In Re: Adam (Ohio App. 1997) (No. 96-L-138). A teacher noticed two students attempting to leave the building and later observed them smoking a substance that smelled like marijuana. The students denied smoking marijuana. The incident was reported to the principal. The students were called into the office and told to empty their pockets. Nothing was found. Believing that he smelled marijuana on the students' clothes, the principal proceeded to search their lockers and the backpacks inside the lockers. A pipe with marijuana residue was found. The court declared the search as "clearly" reasonable and not a violation of the students' rights. Once the student was found smoking, he placed himself in a zone of inquiry which opened the possibility of searches for marijuana. However, the court found a school policy which allowed for the "random" search of lockers to be unconstitutional because the randomness provided for a blanket search which was per se unreasonable.

In re Alexander B., 270 Cal.Rptr. 342 (Cal.Ct.App.1990). A California court ruled that a search of a group of five or six students was reasonable when one unidentified student in the group yelled that someone has a gun. The search was by a police officer and there was exigency.

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